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under the Highway Commission from any fund, but the payment must be provided for by special appropriation by the Legislature.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 735.]

Certified from Industrial Commission.

Claim by Grace Lillard Smith before the Industrial Commission against the State Highway Commission of Virginia and the Commonwealth of Virginia to recover compensation for the death of claimant's husband employed by the Highway Commission. On questions of law certified by the Industrial Commission. Claimant held entitled to compensation from the Commonwealth, but not from the State Highway Commission.

BEAR'S ADM'X *v.* BEAR.

Nov. 17, 1921.

[109 Va. 313.]

1. Appeal and Error (§ 1170 (3)*)—Permitting at Trial Inclusion of Defense Previously Asserted Held Not Prejudicial.—Where defendant stated the grounds of his defense under plea of nil debet as infancy, and that the note was without consideration and not intended to be collected, but the latter grounds were apparently overlooked, plaintiff, under Code 1919, § 6104, was not prejudiced by the court's action in permitting defendant at the trial to amend his statement of defense by adding those grounds thereto.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 584.]

2. Evidence (§ 437*)—Infant Can Show There Was No Intention that Note Was to Be Paid.—The rule excluding parol evidence to contradict a written instrument does not prevent an infant from testifying that a note given by him, claimed by plaintiff to have been for necessities, was not intended to be paid, since the infant is liable only for the reasonable value of necessities furnished, not on the contract therefor.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 689.]

3. Pleading (§ 339*)—Conduct of Judge Held Not Refusal of Leave to Withdraw Plea of Infancy.—Where defendant stated on cross-examination that he did not rely on his plea of infancy, it was not error for the trial court, after informing him he could withdraw such plea if he chose, to permit him to leave the stand and confer with his counsel, and, on the counsel's announcement in the defendant's presence that the plea should stand, to refuse to consider it withdrawn.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 231.]

4. Trial (§ 194 (12)*)—Instruction that Sending Infant to Academy Was Not Necessary Invades Province of Jury.—In an action on

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

a note given by an infant for money advanced by a brother to send him to a boarding academy, an instruction that sending him to the academy was not a necessary, if public schools which he could attend while at home were available, was an erroneous invasion of the province of the jury.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 730.]

5. Infants (§ 102*)—Whether Things of Class Which Might Be Necessaries Were Such Held for the Jury.—In an action for money advanced to an infant claimed to have been for necessaries, the court must determine whether the purpose was within the class of things which might be claimed as necessaries, and whether there was any evidence to sustain a finding that they were such, but if it determines those questions in the affirmative, whether the things were actually necessary under the circumstances is for the jury.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 350.]

6. Infants (§ 50*)—Advancement as Gift by Brother for Schooling Is Not a Necessary.—Where a mother intended to advance her son money to attend a boarding school, but a brother proposed to make the gift himself, and did so, such advancement was not a necessary.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 468.]

7. Evidence (§ 276*)—Admission against Interest by Decedent Is Receivable against Administratrix.—In an action by the administratrix of a decedent's estate, admission by plaintiff's intestate against his interest are receivable in evidence for defendant.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 722.]

8. Infants (§ 98*)—Evidence that Neither Parent Requested Advancement to Send Infant to Academy Admissible on Issue as to Whether It Was a Necessary.—In an action for money advanced by a brother to an infant, to send him to a boarding academy, evidence that neither of the infant's parents requested such advancement is admissible on the infant's behalf on the issue whether such advancement was a necessary.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 468.]

Error to Circuit Court, Rockingham County.

Action of debt by J. D. Bear's administratrix against Eugene F. Bear. Judgment for defendant, and plaintiff brings error. Reversed and remanded for new trial.

Edward C. Martz, of Harrisonburg, for plaintiff in error.

E. D. Ott, of Harrisonburg, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.